

## **ORDINANCE NO. 3677**

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADDING A NEW CHAPTER 5.60, GRAFFITI; DECLARING GRAFFITI A PUBLIC NUISANCE; PROHIBITING DEFACEMENT OF PROPERTY WITH GRAFFITI AND POSSESSION OF GRAFFITI IMPLEMENTS WITH INTENT TO DEFACE; IMPOSING CRIMINAL PENALTIES; REQUIRING THE REMOVAL OF GRAFFITI; ESTABLISHING AN APPEALS PROCESS; ESTABLISH A GRAFFITI FUND; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, cities are authorized under Titles 35 and 35A RCW to make and enforce by appropriate ordinances all such police and sanitary regulations as are not in conflict within state law; and

WHEREAS, cities are authorized under Titles 35 and 35A RCW to declare by ordinance what shall be deemed a nuisance; and

WHEREAS, cities are authorized under Chapter 7.48 RCW to abate public nuisance at the expense of the parties creating, causing, committing, or allowing the same to continue; and

WHEREAS, graffiti is vandalism; and

WHEREAS, the defacement of public and private property by graffiti vandals costs businesses, property owners, cities, the counties, and the State millions of dollars a year; and

WHEREAS, graffiti is a visual symbol of disorder that erodes feelings of safety in and demoralizes our neighborhoods; and

WHEREAS, some forms of graffiti can create a climate of intimidation, contributing to neighborhood decline; and

WHEREAS, the existence of graffiti often becomes an invitation to additional crime; and

WHEREAS, graffiti can result in lowered property values, business viability, and community pride; and

WHEREAS, there is substantial evidence that the prompt removal of graffiti is an effective prevention strategy which discourages its return, while the failure to promptly remove graffiti increases the likelihood that more graffiti will occur on the same site and on nearby property; and

WHEREAS, public and private efforts to reduce graffiti are undermined by those few property owners who fail to cooperate in cleaning graffiti from their property despite requests from their neighbors; and

WHEREAS, the failure to maintain one's property by removing graffiti to a reasonable degree and within a reasonable period of time constitutes a public nuisance for the reasons set forth above; and

WHEREAS, it is necessary to take steps now to protect the public health, safety and welfare of our community against this threat; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO  
ORDAIN AS FOLLOWS:

Section 1. A new Chapter 5.60 Graffiti is hereby adopted and added to Title 5

ECC to read as follows:

#### **Chapter 5.60**

#### **GRAFFITI**

Sections:

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| 5.60.010 | Declaration of policy – Findings.                |
| 5.60.020 | Definitions.                                     |
| 5.60.030 | Prohibited acts.                                 |
| 5.60.040 | Declaration of public nuisance.                  |
| 5.60.050 | Notice of graffiti nuisance.                     |
| 5.60.060 | Appeal, abatement and cost recovery proceedings. |
| 5.60.070 | Trust fund.                                      |
| 5.60.080 | Remedies not exclusive.                          |
| 5.60.090 | Severability.                                    |

**5.60.010 Declaration of policy – Findings.**

The City Council finds that graffiti on public and private buildings, structures, and on personal property, including motor vehicles, creates a condition of blight within the City that can result in the deterioration of property values, business opportunities, and enjoyment of life for persons using adjacent and surrounding properties. The City Council further finds that the presence of graffiti is inconsistent with the City's goals of maintaining property, preventing crime, and preserving aesthetic standards. Accordingly, it is the purpose of this Chapter to promote the health, safety and welfare of the general public. No provision of

this Chapter and no action taken pursuant hereto is intended to impose any duty whatsoever upon the City or any of its officers or employees. Further, nothing contained herein is intended or shall be construed as forming the basis of any liability on the part of the City, its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City, its officers, employees or agents.

**5.60.020 Definitions.**

A. "Abate" or "abatement" means the removal, painting over, or the obscuring of graffiti from view.

B. "Graffiti" means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise recognized and deemed a public nuisance pursuant to RCW 7.18.120 and .130.

C. "Graffiti implement" means an aerosol paint container, broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other recognized, similar and comparable device capable of scarring or leaving a visible unauthorized inscription, word, figure, painting, mark or other defacement on any natural or manmade surface. A "broad-tipped" marker is any form of ink pen with a tip exceeding one-quarter (1/4) inch in width.

**5.60.030 Prohibited acts.**

A. Defacement. It shall be unlawful for any person to apply graffiti to any natural or manmade surface on any City-owned property or, without the permission of the owner or occupant, on any non-City-owned property.

B. Possession of Graffiti Implements. It shall be unlawful for any person to possess any graffiti implement, with intent to damage property or under circumstances evincing an intent to use the same in order to damage property, while in or upon any public facility, park, playground, swimming pool, school property, recreational facility, or other public building or structure owned or operated by the City or while in or near an underpass, bridge

abutment, storm drain, or similar types of infrastructure unless otherwise authorized by the City.

C. Penalties. Any person violating any provisions of this section shall be deemed guilty of a gross misdemeanor and upon conviction thereof shall be punished as provided in Chapter 5.50 ECC. In the case of a minor, the parent or guardian having custody of the juvenile shall be jointly and severally liable with the minor for the payment of all fines and/or restitution imposed as the result of a violation of this section, except that liability shall not be imposed upon any governmental entity, private agency, or foster parent assigned responsibility for an unemancipated minor pursuant to court order or the department of social and health services.

#### **5.60.040 Declaration of public nuisance.**

Graffiti is determined to be detrimental to the public health, safety and welfare and is a public nuisance. It is a visual symbol of disorder that demoralizes and erodes feelings of safety in our neighborhoods. It contributes to neighborhood decline by inviting crime and leading to a climate of intimidation in our neighborhoods. Furthermore, it lowers property value, commerce, community pride and tax revenues. Prompt removal of graffiti from public and private property is in the public interest.

#### **5.60.050 Notice of graffiti nuisance.**

A. When the City becomes aware of a property within the City with graffiti visible from a public or quasi-public place, the City shall identify the party(ies) responsible for the property and send the party an informational letter describing the nature and location of the graffiti and requesting that the graffiti be removed promptly. The letter shall explain the problems caused by the continued presence of graffiti, the need for its prompt removal at the responsible party's expense, describe the resources available to aid in graffiti removal, and give notice that failure to remove graffiti is a violation of City code that may lead to legal action to remove the graffiti at the expense of the party and may subject the party to civil penalties. The letter may also identify any graffiti removal assistance programs available through the City, or any private graffiti removal contractors.

B. If the graffiti is not removed within a reasonable period, as determined by the Development Services Director, after the information letter has been sent, the City shall issue an Order to

Correct pursuant to the City's Civil Violation and Enforcement Procedures set forth in Chapter 20.110 ECDC to the property owner and the occupant of the property, if different; or in the alternative, the building owners association or management company if there are multiple owners and/or occupants.

C. The City shall issue a Notice of Civil Violation pursuant to the City's Civil Violation and Enforcement Procedures set forth in Chapter 20.110 ECDC to property owners or building owners association that fail to comply with the terms of the Order to Correct. The City through the Development Services Director shall assess civil penalties at the rate of \$250.00 per day per violation. Each and every day or portion thereof during which any violation is committed, continued, permitted or not corrected shall be a violation for purposes of this Chapter. The Development Services Director shall have the discretion to reduce the assessed daily civil penalty to not less than \$25.00 per day upon a showing of good cause and need consisting of the following factors: frequency of offense, cooperation with the City in efforts to abate the graffiti, progress in abating the graffiti, and other relevant factors.

D. The Development Services Director shall have the discretion to grant additional days to abate the graffiti upon a showing of good cause and need consisting of the following factors: frequency of offense, cooperation with the City in efforts to abate the graffiti, progress in abating the graffiti, and other relevant factors.

**5.60.060 Appeal, abatement and cost recovery proceedings.**

A. A party to whom the Notice of Violation is issued may appeal the same as set forth in ECDC 20.110.040(C). Written notice requesting an appeal hearing before the Hearing Examiner shall be directed to the Development Services Director, and shall include the name of the party requesting the appeal, the address of the graffiti nuisance property, a statement indicating standing to appeal, and a concise statement as to reasons why the graffiti on the property does not constitute a public nuisance.

B. Notice of Appeal Hearing. Upon a timely written request for an appeal, the City shall provide the appellant, notice of the appeal hearing before the Hearing Examiner at least five (5) business days in advance of the same. Notice shall be deemed

served three business days after the same is mailed to the parties by certified US mail.

C. Determination of Hearing Examiner. The determination of the Hearing Examiner after the due process hearing shall be final, and there shall be no further administrative appeal. If after the due process hearing, the Hearing Examiner determines that the property contains graffiti viewable from a public or quasi-public place, the Hearing Examiner shall declare the same a nuisance and order the party to whom the Notice of Violation is issued to abate it.

D. Hearing Examiner shall issue a decision and order, if necessary, containing the following: findings of fact; conclusions in support of the decision and order; type and method of abatement action required; the date by which said abatement must be completed; and civil penalties to be assessed by the City should appellant fail to abate the graffiti by the date established in the decision and order. Civil penalties shall range from \$25.00 to \$250.00 based on appellant's appearance at the hearing, frequency of offense, cooperation with the City in efforts to abate the graffiti, progress in abating the graffiti, and other relevant factors. Each and every day or portion thereof during which any violation is committed, continued, permitted or not corrected shall be a violation for purposes of this chapter.

E. Abatement. The City may, pursuant to Chapter 7.48 RCW, obtain a warrant of abatement to enter upon the property, cause the removal, painting over (in such color as shall meet with the approval of the Court), or such other eradication thereof as the Court determines appropriate, and shall provide the property owner, or building owners association, thereafter with an accounting of the costs of the eradication effort on a full cost recovery basis including reasonable legal fees and costs.

#### **5.60.070 Trust fund.**

A. The City Council hereby creates the City of Edmonds Anti-Graffiti Trust Fund. Penalties assessed against violators of this Ordinance shall be placed in the fund, along with any monetary donations received from persons wishing to contribute to the fund. The City Council shall direct the expenditures of monies in the fund. Such expenditures shall be limited to the payment of the cost of graffiti removal from public property, the payment of the cost of graffiti removal from private property pursuant to subsection B below, the payment of rewards for information leading to the

conviction of violation of the Ordinance, the costs of administering the Ordinance, and such other public purposes as may be approved by the Council by resolution.

B. The trust fund may be expended by the City to abate graffiti from private property without engaging in cost recovery proceedings only upon approval by the Council following a recommendation of the Hearing Examiner upon his or her finding that one of the following conditions is met: (1) abating graffiti from the private property in question accomplishes a fundamental government purpose; (2) abating graffiti from the private property in question serves the public interest and there is no donative intent; or (3) abating graffiti from the private property in question will assist the poor and infirm. Recommendation from the Hearing Examiner shall be submitted to the Council for consideration and decision. Approval shall be by resolution.

**5.60.080 Remedies not exclusive.**

The remedies for violation of this chapter that are set forth in this chapter are not exclusive.

**5.60.090 Severability.**

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

Section 2.     Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3.     Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

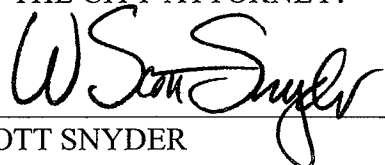
APPROVED:

  
MAYOR GARY HAAKENSEN

ATTEST/AUTHENTICATED:

  
CITY CLERK, SANDRA S. CHASE

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY   
W. SCOTT SNYDER

FILED WITH THE CITY CLERK:	01/11/2008
PASSED BY THE CITY COUNCIL:	01/15/2008
PUBLISHED:	01/20/2008
EFFECTIVE DATE:	01/25/2008
ORDINANCE NO. <u>3677</u>	



**SUMMARY OF ORDINANCE NO. 3677**

of the City of Edmonds, Washington

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On the 15th day of January, 2008, the City Council of the City of Edmonds, passed Ordinance No. 3677. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADDING A NEW CHAPTER 5.60, GRAFFITI; DECLARING GRAFFITI A PUBLIC NUISANCE; PROHIBITING DEFACEMENT OF PROPERTY WITH GRAFFITI AND POSSESSION OF GRAFFITI IMPLEMENTS WITH INTENT TO DEFACE; IMPOSING CRIMINAL PENALTIES; REQUIRING THE REMOVAL OF GRAFFITI; ESTABLISHING AN APPEALS PROCESS; ESTABLISH A GRAFFITI FUND; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this Ordinance will be mailed upon request.

DATED this 16th day of January, 2008.

  
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CITY CLERK, SANDRA S. CHASE